

February 4, 2002

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

850 Union Bank of California Building  
900 Fourth Avenue  
Seattle, Washington 98164  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

**RECONSIDERED:  
FINAL REPORT AND DECISION ON VARIANCE APPEAL**

SUBJECT: Department of Development and Environmental Services File No. **L01VA012**

**WAYNE DALGARDNO**  
Variance Appeal

Location: 14318 196<sup>th</sup> Avenue Southeast

Applicant: Wayne Dalgardno,  
*Represented by Michael A. Spence, Attorney at Law*  
2033 Sixth Avenue, Suite 1040  
Seattle, WA 98121-2632  
Telephone: (206) 448-0402  
Facsimile: (206) 448-1843

Appellants: **Bob and Bernie Meyer et al**  
19623 SE 143<sup>rd</sup> Street  
Renton, WA 98059  
Telephone: (425) 255-7505

King County: Department of Development and Environmental Services,  
*Represented by John Briggs,*  
King County Prosecuting Attorney  
516 Third Avenue, Room E550  
Seattle, WA 98104  
Telephone: (206) 296-9015  
Facsimile: (206) 296-0191

**SUMMARY OF DECISION/RECOMMENDATION:**

Department's Preliminary Recommendation:	Deny
Department's Final Recommendation:	Deny
Examiner's Decision:	Deny appeal

**EXAMINER PROCEEDINGS:**

Hearing Opened:	November 29, 2001
Hearing Closed:	December 4, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

## ISSUES/TOPICS ADDRESSED:

- Variances
- Buffers
- Lake
- Scenic view protection
- Sensitive areas
- Setbacks
- Wetlands
- Wildlife habitat

## SUMMARY:

Denies the appeal of neighboring property owners regarding wetland buffer area variance. Appeal was based on alleged failure to comply with KCC 21A.24.030 criteria, loss of view and injury to public interest in adjacent lake and associated wetlands.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS:

1. **Reconsideration.** The examiner's January 24, 2002 report and decision on the above-captioned matter erroneously addressed Applicant Dalgardno's previously withdrawn appeal. On January 30, 2002 the Department, acting through its attorneys Cassandra Newell and John Briggs, Senior Deputy Prosecuting Attorneys, reminded the examiner of the error by filing a motion for reconsideration (exhibit no. 61, attached) which asks the examiner to exise from the report those portions which address the withdrawn appeal. The withdrawn appeal is a matter of record, having been described at the outset of the hearing. The record contains no dissent to that action.
2. **Departmental decision on variance application issued.** On August 10, 2001, the Department of Development and Environmental Services ("DDES" or "Department") issued a zoning variance report and decision which granted a variance to construct a portion of a single-family residence within the 100 foot wide Class 1 wetland buffer associated with Lake McDonald in unincorporated King County.<sup>1</sup> The variance decision effectively reduces a required 100 foot wide buffer to 60 feet. The variance decision also imposes certain conditions upon the residence of concern:
  - A. Requiring compliance with previously submitted plans and requiring establishment of a 10 foot building setback line beyond which all land waterward shall be designated as wetland buffer.
  - B. Requiring mitigation in the form of "enhancement of the entire wetland buffer contained within the subject property."
  - C. Requiring a "final wetland buffer restoration plan prior to issuance of a certificate of occupancy" (with the property owner having responsibility to implement that plan).

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<sup>1</sup> Located at 14318 – 196<sup>th</sup> Avenue Southeast; also identified as tax lot no. 25 in the southwest quarter of Section 17-Township 23-Range 6 of the King County Assessor's maps.

- D. Requiring the property owner to post bond to cover all restoration work and to guarantee planting plan success, as well as requiring annual monitoring reports for three years following wetland restoration work.
- E. Requiring a revised notice on title approved by King County depicting the onsite sensitive area and buffer.

The precise and governing language of the variance decision is contained on pages 5 and 6 of the Department's report and decision dated August 10, 2001 (exhibit no. 1).

3. **Applicant Dalgardno appeal withdrawn.** Wayne and Karen Dalgardno ("Applicant") timely filed appeal from the Department's variance report and decision. However, Dalgardno agreed to withdraw that appeal on November 28, 2001. See exhibit no. 61, attached.
4. **Neighboring property owner appeal filed.** Bob and Bernie Meyer *et al* ("Appellant") also timely filed appeal from the Department's variance decision. The Appellant argues:
  - That the Department's evaluation of whether strict enforcement of the provisions of the zoning code creates an "unnecessary hardship" to Applicant Dalgardno was improperly influenced by the fact that the Dalgardno residence already existed at the time of variance application. See KCC 21A.44.030.A.
  - That the variance application does not meet the criteria established by KCC 21A.44.030.B which requires a finding of necessity due to the unique size, shape, topography, or location of the subject property.
  - That the variance application does not meet the criteria established by KCC 21A.44.030.C, which requires a finding that the subject property is deprived, by provisions of the zoning code, of rights and privileges enjoyed by other properties in the vicinity and under identical zone.
  - That the variance application fails to meet the criterion established by KCC 21A.44.030.D which requires a finding that the variance will not create health and safety hazards, will not be materially detrimental to the public welfare and will not be unduly injurious to property or improvements in the vicinity. With respect to this argument, Appellant Meyer, *et al* alleges injury to their properties or to the public welfare due to loss of view, impact on a class 1 wetland and impact upon the Lake McDonald environment.
5. **General findings.** The subject Dalgardno property is located at the north end of Lake McDonald. The property is long and narrow, 50 feet wide and approximately 640 feet long; and comprises 33,105 square feet.

On June 12, 2000, Dalgardno applied for a building permit<sup>2</sup> to construct a two-story residence on the property. The site plan prepared by the Applicant shows the house setback approximately 200 feet from the edge of the lake and associated wetland fronting on the eastside of the property. However, the Applicant's site plan did not include the subject off-site wetland to the northeast. Due to lakeshore contour, the class 1 wetland meanders inland to within approximately 70 feet from the northeast corner of the house. Approximately 60% of the footprint of the residence lies within the 100 foot buffer.

As a single-family residence, the project is categorically exempt from state environmental policy act review. Comprising less than 19 acres, the Lake McDonald shoreline and associated wetlands are not subject to state shoreline management act review. RCW 90.58.030(1)(d).

The subject property and surrounding properties are classified RA-5 (rural; minimum lot size 5 acres). However, most of the lots in the immediate Lake McDonald vicinity were established prior to the adoption of this zoning and generally are smaller than five acres.

The sensitive areas regulations are contained in KCC 20.24, a chapter of the county zoning code, and are therefore, subject to the variance provisions which apply to the zoning code—those same variance provisions which have been applied by the Department and by this review.

The subject property and surrounding properties are illustrated in the plat drawings and tax assessor maps of record. They reveal the geographic relationship of the Dalgardno property to complainant properties.

6. **KCC 21A.44.030.A; unnecessary hardship to the property owner.** In its report and decision of August 10, 2001 (exhibit no. 1), the Department concluded:

In evaluating this variance application, the decision-maker weighed the benefits of applying the buffer and setback standards contained in the zoning code thus requiring the existence to be re-located with benefits that could be achieved by approving the variance with the residence in its current location. Re-locating the residence would be difficult and a costly remedy. In this case, because the residence is substantially constructed in its current location, the decision-maker has concluded that the benefits of approving the variance with the conditions stated below, outweigh the benefits of denying the variance and requiring the Applicant to re-locate the residence on the lot. Based on the existing condition of the off-site buffer, requiring enhancement of the on-site buffer on the subject property 'will provide equal or greater environmental protection to the lake, than relocating the residence approximately 45 feet to the west.

The Department concluded further:

The strict enforcement of the buffer and setback requirements contained in KCC 21A.24 creates an unnecessary hardship to the Applicant. The Applicant now seeks a variance to reduce the sensitive area requirements. Under [KCC] 21.44.030, DDES has the authority to approve such a variance.

Appellant Meyer, *et al* contests these conclusions, arguing that the hardship, "unnecessary" or not, was self-imposed by Applicant Dalgardno; that—as discussed in finding no. 5, above—Dalgardno (or his agent, Ralston Homes) did not disclose wetland or wetland buffer boundaries

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<sup>2</sup> DDES file #B00L0796; exhibit no. 5.

at the time of application; and that, therefore, the hardship can hardly be called “unnecessary”.

King County Ordinance no. 12479, enacted October 17, 1996, amended the zoning code variance criteria (KCC 21A.44.030) specifically by deleting the criteria that stated, “the need for the variance is not the result of deliberate actions of the Applicant or property owner.” This was one of only two changes to the variance criteria contained in ordinance no. 12479. Thus, it easily may be found that the Council of King County certainly intended to do what it did. Twelve days after King County Executive Gary Locke signed his approval of the ordinance, an internal DDES memorandum explained that the ordinance “deletes the variance criteria which specifies that the need for the variance is not the result of the deliberate actions of the Applicant.” Exhibit no. 58.

7. **KCC 21A.44.030.B; unique property characteristics.** KCC 21A.44.030 requires that a variance shall be “necessary because of the unique size, shape, topography or location of the subject property.” In its report and decision:

The narrow size and shape of the lot would not allow the Applicant to re-locate the residence in a southerly direction to achieve the required buffer and setback from the offsite wetland while providing the same setback from the edge of Lake McDonald and its associated wetland on the subject property. Also, due to the slight oblique angle near the mid-point of the property, the Applicant could not relocate the current residence without violating an interior setback requirement (i.e., 5-feet) on the northern side yard.

Appellant Meyer *et al* argues that this conclusion is unfounded because, “the [Dalgardno] property has at least 350 lineal feet of buffer/setback free area in which to build.” As noted earlier, the area thus described is only 50 feet wide and bends in the middle. Further, it is encumbered by septic drainage requirements (although the actual drainfield will be located off site). Evidence of record depicts the following unusual lot configuration:

**Image contained in master file copy retained  
by Office of the Hearing Examiner**

8. **KCC 21A.44.030.D; health and safety; public welfare, undue injury.** KCC 21A.44.030.D requires that:

The variance does not create health and safety hazards, is not materially detrimental to the public welfare or is not unduly injurious to property and improvements in the vicinity.

In its August 10, 2001 report and decision the Department concluded that the variance is consistent with this criterion. Appellant Meyer *et al* argues that the Department wrongly reached its conclusion because the Department did not properly consider the loss of views of Lake McDonald incurred by neighboring property owners or the impact of the development on Lake McDonald and its associated class 1 wetland buffer. The Dalgardno house will indeed block or reduce views of Lake McDonald from both the Whitsett and Meyer properties. Meyer *et al* states that both homes were built with the living areas oriented to the lake. They expressed concern not only for the loss of view, but also for “bad precedent” having a long-term cumulative affect on additional developments around Lake McDonald.

The Department responds that the issue of “loss of view” is not germane to the analysis of a variance to reduce the buffer and setback requirements of the wetland. The Department argues further that, absent a view easement from the Dalgardnos, the Meyers have no legal right to view protection. The Department relies upon Blacks Law Dictionary to define injury as meaning “the invasion of any legally protected interest of another” and argues further that a building or structure does not amount to an illegal nuisance merely because it blocks the view from a neighbor’s property.

The hearing record contains no site-specific scientific analysis suggesting that Meyer *et al* is correct when assuming that the project will damage Lake McDonald or its associated wetland buffer. Presently the buffer is mowed lawn and non-native invasive species including Himilayan blackberry and English ivy. Thus, the wetland buffer area located within the subject property provides scant functional buffer value. That is, it does not provide the usual wetland benefits of wildlife habitat and water quality filtration.

As a condition of the variance approval, the existing low quality buffer area will be planted with native woody vegetation which will provide wildlife, water quality and flood control benefits not presently realized. Pesticides and herbicides will not be allowed in the wetland or wetland buffer. (Such chemicals are commonly applied to lawn areas. However, there is no evidence in this hearing record that they have been applied during the period of Dalgardno ownership of the property.) The planting plan will be subject to the review and approval of a Departmental wetlands scientist. KCC 21A.24.340.E requires, in part:

All alterations of wetlands shall be replaced or enhanced on the site or within the same drainage basin using the following formulas: Class 1 and 2 wetlands on a 2:1 basis and class 3 wetlands on a 1:1 basis within equivalent or greater biologic functions including, but not limited to, habitat functions and with equivalent hydrological functions including, but not limited, to, storage capacity.

Plantings will be selected from a Departmentally-approved list of wetland species including cedar, bitter cherry, Oregon ash, Indian plum, huckleberry and others. The approved wetland species are based on scientific surveys of wetland characteristics within the Puget Sound basin and King County.

The Department intends to require only that area that is equal to the area of the buffer that is reduced by the variance. The Department estimates this area as “approximately 2,000 square feet” or approximately 487 square feet more than Applicant Dalgardno’s calculation. The Department observes further that only wetland buffer contained within the subject property is affected by the mitigation/ enhancement/ restoration requirement and that the Dalgardno’s are not required to dedicate any property to the public.

## CONCLUSIONS:

### Contested Criteria

1. The variance criteria established by KCC 21A.44.030.E through -- .030.L are either uncontested or not relevant to this review. Regarding these criteria this reviewer will not enter any substitute for the judgement of the Department’s responsible official in this matter.
2. In making the following conclusion nos. 7 through 9, the examiner notices that the King County Zoning Code is not adopted pursuant to RCW 36.70 (the State Planning Enabling Act), but rather is adopted pursuant to the home rule charter authority of King County. KCC 21A.01.020. This zoning code is enacted “to be consistent with and implement the comprehensive plan.” That plan is prepared in accordance with RCW 36.70A (Growth Management Act). That statute, however, authorized comprehensive planning, not zoning. Consequently, case law which is based upon the State Planning Enabling Act (RCW 36.70) or on local zoning ordinances adopted pursuant to that statute, must be regarded as suspect at best, irrelevant at worst, when reviewing zoning and zoning variance decisions taken pursuant to the King County Zoning Code (KCC Title 21A).
3. For the reasons indicated in finding no. 7, above, Appellant Meyer *et al*’s argument that hardship cannot be “self-imposed” is contrary to law. The King County Council amended its KCC 21A.44.030 variance criteria by adopting ordinance no. 12479 with the clear and obvious intent to delete that criterion. Lacking general jurisdiction, the Examiner will presume council adopted ordinances to be lawful unless shown otherwise upon higher review.

Then there is the question, raised by Dalgardno, as to whether the hardship results from the deliberate actions of the Applicant/property owner or from DDES error. Dalgardno argues that the wetland buffer area encroachment resulted from incomplete Departmental review upon which he diligently relied. The Department counters that Dalgardno failed to disclose the presence of the proximate wetland at issue as required by code. See finding no. 5, last paragraph, and KCC 21A.24.090.A. The debate might well broaden, should anyone wish to pursue it on higher review, to include Ralston Homes -- who may have acted as Dalgardno’s expert agent and therefore may bear some responsibility for the wetland buffer area delineation mistake. This debate, however, need not be resolved in this review. It makes no difference whether the cause for variance arises from Dalgardno’s actions, deliberate or otherwise. That variance review criterion does not exist.

4. The unique size, shape and location of the subject property is readily apparent. See finding no. 9 and Exhibit nos. 1, 2, 4, 18, 19 and 30. The decision of the Department, while reasonably subject to debate, clearly is not willful, unreasoning and in disregard of the facts and circumstances. When there is room for two opinions, a decision honestly reached upon due consideration is not arbitrary and capricious. Nor is it clearly erroneous. There is no clear impression that a mistake has been made. On the contrary, the Department’s conclusion that variance is necessary because of the unique size, shape and location of the subject property is supported by the evidence. The evidence of record demonstrates that there are many homes on Lake McDonald that enjoy proximity to the lake to a far greater extent than will the Dalgardno residence. Exhibit no. 17.

This constitutes rights and privileges enjoyed by other properties in the vicinity and under the identical zone.

Appellant Meyer *et al* is understandably concerned that this analysis will be precedent setting, that it will result in a series of fallen dominoes through the years which wipe away the wetland buffer protection to Lake McDonald. However, applications must be reviewed on a case-by-case basis. This variance does not set a precedent for future applications unless the circumstances of those future applications are virtually identical. That is highly unlikely. If it does, it also will set a precedent for requiring a distinctively high standard of wetland buffer enhancement as mitigation – something which the photographs of record reveal has not occurred heretofore. Mowed lawn does not constitute a functional buffer.

5. There is no evidence in the record that granting this variance will create either a health or safety hazard. Nor has Appellant Meyer *et al* overcome the evidence of record regarding the protection of Lake McDonald water quality by a) imposing rigorous wetland restoration/mitigation/enhancement requirements and b) by imposing relevant controls contained in the King County Surface Water Management Design Manual. Both regulations – wetland buffer enhancement and drainage controls -- were devised precisely to protect water bodies such as Lake McDonald. From this we may comfortably conclude that granting the variance will not be materially detrimental to the public welfare.

Appellant Meyer *et al* alleges undue injury to property or improvements in the vicinity resulting from diminished views from neighboring properties, primarily the Meyer and Whitsett properties. *Blacks Law Dictionary, Sixth Edition*, (1991) defines “injury” as meaning “the invasion of any legally protected interest of another.” Likewise, *Merriam-Webster’s Dictionary of Law* (1996) defines “injury” as meaning:

A violation of a legally protected interest (as the physical or mental well being, property, reputation, or rights of another) for which the law allows an action for legal or equitable relief.

Absent a view easement from the Dalgardnos, the Meyers and Whitsetts have no legal right to have their view protected. One quick glance at the configuration of lot boundaries (of the Dalgardno, Whitsett and Meyer properties, see Exhibit no. 7, or finding no. 9) makes one wonder how they might ever have thought their views would be protected in perpetuity.

A building or structure does not constitute a prohibited nuisance merely because it blocks the view from a neighbor’s property. *Collinson v. Scott*, 55 Wn. App. 481. We note, also, that Meyer *et al* have shown no recorded legal right to view protection, such as a view easement. Because they have no legal right to unobstructed views, granting a variance that permits a structure that interferes with those views cannot be found unduly injurious to property or improvements in the vicinity of the Dalgardno property, variance or not.

6. As noted in finding no. 2 above, the Dalgardno appeal was withdrawn. No conclusions are required. Because the withdrawn appeal was uncontested at hearing, this issue and request for reconsideration will not be circulated to the other parties for written response before entering the reconsidered final decision below. Moreover, no aspect of the report and decision of January 24, 2002 affecting the Meyer *et al* appeal is changed by these revised findings and conclusions. Consequently, there is no cause or requirement to change the appeal deadlines previously established by the examiner’s report and decision L01VA012 dated January 24, 2002.



## DECISION:

- A. The appeal of Meyer *et al* is DENIED.
- B. The Dalgardno appeal is DISMISSED for the reason indicated in finding no. 2 and conclusion no. 6, above.

ORDERED this 4th day of February, 2002.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 4th day of February, 2002, to the parties and interested persons of record:

Carpenter  
14633 200th  
Renton WA 98059

Wayne Dalgardno  
14707 205th Ave SE  
Renton WA 98059

Roger and Ruth Diemert  
19665 SE 150th St  
Renton WA 98059

Allan Hay  
19601 SE 143d St  
Renton WA 98059

Michael Hunter  
19676 SE 150th St.  
Renton WA 98059

Mary Kane  
19820 SE 150th St  
Renton WA 98059

Jeff Lowry  
14629 200th Ave. SE  
Renton WA 98059

Al and Allie Melder  
19613 SE 143rd St  
Renton WA 98059

Bob and Bernie Meyer  
19623 SE 143rd St  
Renton WA 98059

Eugene and Corinne Palmer  
19668 SE 150th St.  
Renton WA 98059

Sylvai Van Parys  
14230 196th Ave SE  
Renton WA 98059

Jerry & Jackie Penningroth  
14907 199th Pl SE  
Renton WA 98059

Michael A. Spence  
Harrison, Benis & Spence, LLP  
2033 Sixth Ave. Room 1040  
Seattle WA 98121-2532

Burt and Martea Sweet  
19804 SE 150th St  
Renton WA 98059

Richard & Julie Swenson  
14646 196th Ave SE  
Renton WA 98059

Jan Walker  
19637 SE 149th St  
Renton WA 98059

Mary Lou Wesley  
10232 65th Ave S  
Seattle WA 98178

Gerald & Kathy Whitsett  
19633 SE 143rd St  
Renton WA 98059

Greg Borba  
DDES/LUSD  
MS OAK-DE-0100

Steve Bottheim  
DDES/LUSD  
Site Development Services  
MS OAK-DE-0100

John Briggs  
King County Prosecuting Attorney  
Civil Division  
MS KCC-PA-0550

Mike Dykeman  
DDES/Bldg Svcs  
Building Inspection  
MS OAK-DE-0100

Pesha Klein  
DDES  
OAK-DE-0100

Mark Mitchell  
DDES/LUSD  
Current Planning  
MS OAK-DE-0100

Cass Newell  
KC-P A O  
Civil Division  
MS KCC--PA-0554

Carol Rogers  
LUSD/CPLN  
MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

No new appeal period is required for this reconsidered report and decision for the reasons indicated in conclusion no. 6, above. The 21 day appeal period which commenced pursuant to the examiner's first report and decision, dated January 24, 2002, continues to run as provided by the land use petition act. Any appeal must be filed with the Superior Court of King County.

#### MINUTES OF THE NOVEMBER 29, 2001 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO: L01VA012

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Greg Borba. King County was represented by attorneys John Briggs and Cass Newell. Participating in the hearing and representing the Appellants was Bernie Meyers. Representing the Applicant was Michael Spence. Martea Sweet, Kathy Whitsett, Gerald Whitsett, Mike Dykeman, Bob Meyer, and Pesha Klein also participated in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Variance Report and Decision, dated 8/10/2001
- Exhibit No. 2 Preliminary Report to the Hearing Examiner, dated 11/15/2001
- Exhibit No. 3 Variance Application, dated 5/10/2001
- Exhibit No. 4 Applicant's Justification for Variance, dated 5/10/2001
- Exhibit No. 5 Applicant's Site Plan from Building Permit B00L0796
- Exhibit No. 6 Survey of Off-site Wetland, dated 4/12/2001
- Exhibit No. 7 King County Assessor Maps (4)
- Exhibit No. 8 Letter to Mr. Dalgardno from Mike Dykeman, dated 5/2/2001
- Exhibit No. 9 Report and Decision Variance L93VA005
- Exhibit No. 10 Staff photographs (5a-5e)
- Exhibit No. 11 DDES File no. L01VA012
- Exhibit No. 12 Notice of Appeal from Bob and Bernie Meyer to Mr. Miles, Mr. Borba, etc, dated August 21, 2001
- Exhibit No. 13 Statement of Appeal from Meyer, rec'd 9/4/2001,
- Exhibit No. 14 Notice of Appeal from Dalgardno, rec'd Aug 27, 2001
- Exhibit No. 15 Statement of Appeal from Spence (Dalgardno), rec'd 9/4/2001
- Exhibit No. 16 Letter from Bob & Bernie Meyer to Hearing Examiner, dated Nov. 29, 2001
- Exhibit No. 17 DDES photographs (25) dated May 10, 2001
- Exhibit No. 18 Survey-Kroll Map
- Exhibit No. 19 Lot drawings from variance file
- Exhibit No. 20 Portions from Lyle French variance file no L93VA005
- Exhibit No. 21 KCC Zoning Code 21.A.24.075 through 21A.24.090
- Exhibit No. 22 Wetland Delineation Report Criteria
- Exhibit No. 23 Wetland Delineation Map from King County GIS
- Exhibit No. 24 Letter to Ralston Homes, Inc. from Pesha Klein, dated October 1, 2000
- Exhibit No. 25 Notice of Title Requirements -1

- Exhibit No. 26 Excluded  
Exhibit No. 27 Excluded  
Exhibit No. 28 Excluded  
Exhibit No. 29 Statement from Gerald Whitsitt, dated November 15, 2001 (not addressed to anyone)  
Exhibit No. 30 Wetland delineation map and data from Dave Ralston, dated April 13, 2001  
Exhibit No. 31 Fax to Jeri Breazeal from Bernie Meyer dated March 12, 2001  
Exhibit No. 32 E-mail from Bernie Meyer to “Jeri” (not dated)  
Exhibit No. 33 Fax (2 pages) from B. Meyer to Peshia Klein, dated March 14, 2001  
Exhibit No. 34 Fax (2 pages) to Bernard Moore from B. Meyer, dated March 14, 2001  
Exhibit No. 35 Series of e-mails from Wayne Dalgardno and Kathy Whitsitt (5 pages dated April 16, 2001 through May 7, 2001)  
Exhibit No. 36 Letter from Jerry and Jackie Pennigroth to DDES dated June 18, 2001  
Exhibit No. 37 Letter from the Palmers and the Diemerts to DDES dated received June 25, 2001  
  
Exhibit No. 38 Letter from Burt and Martea Sweet to DDES dated June 15, 2001  
Exhibit No. 39 Letter from Michael Hunter to “whom it may concern” dated June 17, 2001  
Exhibit No. 40 Letter from Mary Kane and Jan Walker dated June 23, 2001, (not addressed to anyone)  
Exhibit No. 41 Letter from Mary Lou Wesley and Jeff Lowry, and “Carpenter”, dated June 23, 2001 (not addressed to anyone)  
Exhibit No. 42 Letter from Richard and Julie Swenson to DDES, dated June 25, 2001  
Exhibit No. 43 Letter from Gerald Whitsett, dated June 24, 2001, not addressed to anyone  
Exhibit No. 44 Letter from Kathleen Whitsett, dated June 22, 2001  
Exhibit No. 45 Letter from Bernie Meyer, dated June 20, 2001  
Exhibit No. 46 Letter from Robert Meyer to Greg Borba dated June 21, 2001  
Exhibit No. 47 Withdrawn  
Exhibit No. 48 Gross area aerial photo (1), depicting general wetland area  
Exhibit No. 49 Fine area aerial photo (1), depicting general wetland area  
Exhibit No. 50 Variance mitigation submittal, existing conditions  
Exhibit No. 51 Variance mitigation submittal planting plan  
Exhibit No. 52 Resume for Peshia Klein  
Exhibit No. 53 Resume for Greg Borba  
Exhibit No. 54 Shoreline Management Act of 1971, Title 90 RCW  
Exhibit No. 55 Shoreline Management Act—Lakes Title 173 WAC  
Exhibit No. 56 Title 197 WAC, Environmental Policy, Council on  
Exhibit No. 57 Map of buildable area on Lake McDonald  
Exhibit No. 58 Copy of Ordinance no. 12479, cover letter dated October 29, 1996  
Exhibit No. 59 Basic Restoration and Enhancement Guidelines, dated 12/15/98  
Exhibit No. 60 Letters of support given to Mr. Dalgardno  
    a. June 18, 2001 to Mr. Dalgardno from Penny Merrill and Greg Duffy  
    b. August 15, 2001 to Whom It May Concern from Bill and Patsey Pitt  
    c. August 28, 2001 to Whom It May Concern from Suzanne Lowry  
    d. August 14, 2001 to Whom It May Concern from John and April Nelson

Entered pursuant to reconsideration request of January 30, 2002:

- Exhibit No. 61 King County Motion for Reconsideration, dated January 30, 2002, with Applicant’s “notice of dismissal of appeal,” dated November 27, 2001, attached.